

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Susruta Sudula	Team: Team # 2	CCRB Case #: 201210091	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/31/2012 1:00 PM	Location of Incident: 52nd Precinct Stationhouse	Precinct: 52	18 Mo. SOL 1/31/2014	EO SOL 1/31/2014	
Date/Time CV Reported Sat, 08/04/2012 8:11 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 08/04/2012 8:11 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Erick Acevedo	12656	901082	052 PCT
2. POM Kelvin Garcia	24099	936650	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Erick Acevedo	Discourtesy: PO Erick Acevedo spoke discourteously to § 87(2)(b)	
B.POM Erick Acevedo	Abuse: PO Erick Acevedo threatened § 87(2)(b) with the use of force.	
C.POM Erick Acevedo	Abuse: PO Erick Acevedo did not obtain medical treatment for § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

## Case Summary

On August 4, 2012, § 87(2)(b) filed the following complaint via the Call Processing System at the CCRB (encl. 3A-B). On July 31, 2012, § 87(2)(b) was arrested for violating an order of protection. The following allegations resulted.

- **Allegation A: Discourtesy- PO Erick Acevedo spoke discourteously to** § 87(2)(b)
- **Allegation B: Abuse of Authority- PO Erick Acevedo threatened** § 87(2)(b) **with the use of force.**
- **Allegation C: Abuse of Authority- PO Erick Acevedo did not obtain medical treatment for** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

- § 87(2)(g), § 87(4-b)

## Results of Investigation

### Civilian Statement

**Complainant/ Victim:** § 87(2)(b)

- A § 87(2)(b) -old, 5'5" tall, 168 pound black male with black hair and brown eyes. § 87(2)(b) provided a statement at the CCRB on September 19, 2012 (encl. 4A-F).

### CCRB Testimony

On July 31, 2012, at approximately 11:00 a.m., § 87(2)(b) was exiting his residential building with his brother, § 87(2)(b) § 87(2)(b) to go to a store. As they proceeded down the block, § 87(2)(b) saw a patrol car that was parked across the street. There were two officers in the vehicle and PO Acevedo was the operator. PO Acevedo provided his name to § 87(2)(b) and identified himself as a domestic violence officer from the 52<sup>nd</sup> Precinct. § 87(2)(b) described PO Erick Acevedo as 5'7" tall, over 200 pounds, heavyset, with glasses and dark hair. The second officer, identified through the investigation at PO Kelvin Garcia, was described as 150 to 160 pounds, with a slim build and dark, spikey hair.

PO Acevedo approached § 87(2)(b) discussed the validity of an order of protection and determined that § 87(2)(b) had violated that order. Once they arrived at the precinct, at approximately 1:00 p.m., PO Acevedo came to the car door and asked § 87(2)(b) to get out. As he asked § 87(2)(b) PO Acevedo grabbed his gun, but did not draw it out of the holster. § 87(2)(b) asked why PO Acevedo was grabbing his gun. PO Acevedo told § 87(2)(b) not to make this worse for himself and the other officer told § 87(2)(b) to get out of the car. § 87(2)(b) refused, stating that he felt threatened by PO Acevedo because PO Acevedo was grabbing his gun for no reason. § 87(2)(b) then asked if he could just put a leg out of the vehicle, to which PO Acevedo told § 87(2)(b) to "get out of the fucking car." § 87(2)(b) told PO Acevedo that he would exit the car, but asked why PO Acevedo had his hand on his gun. PO Acevedo told § 87(2)(b) that he would take his hand off the gun and asked that § 87(2)(b) get out of the car. § 87(2)(b)

§ 87(2)(b) asked that the other officer help him get out of the vehicle because the seats were too tight and it was difficult to exit the car. PO Garcia complied and took § 87(2)(b) out of the patrol car.

§ 87(2)(b) told PO Acevedo that he did not wish to be in the precinct. PO Acevedo had arrested § 87(2)(b) seven times, six years ago. PO Acevedo dismissed § 87(2)(b) complaints and did the processing at the stationhouse. § 87(2)(b) continued complaining and PO Acevedo told him to shut up. § 87(2)(b) told PO Acevedo that he would report him to a judge. PO Acevedo then presented § 87(2)(b) with a hypothetical scenario, stating: “What would happen if one day you came out of your building and you’ll be walking down the block and then I’ll see you and you see me and then I’ll say that you have a weapon on you. And then you’ll know what’ll happen from there” § 87(2)(b) asked PO Acevedo if he was threatening him. To this, PO Acevedo stated, “You don’t have to worry about it being a threat. It’s a promise.” § 87(2)(b) believed that PO Acevedo was threatening to shoot him.

During his time in the holding cell, § 87(2)(b) also asked PO Acevedo why he was locking him up. PO Acevedo responded that it was because § 87(2)(b) was a “woman beater and a rapist.” § 87(2)(b) stated that officers kept walking by, but did not believe that any of them heard PO Acevedo say this. § 87(2)(b) stated that there was a female in the next cell who may have heard PO Acevedo say this.

§ 87(2)(b) was in the stationhouse from the morning on July 31, 2012 when he was arrested to 2:00 a.m. to 3:00 a.m. on August 1, 2012. § 87(2)(b) told PO Acevedo that he took psychiatric medications for depression, anxiety and mood swings, and wanted to go to the hospital. PO Acevedo told § 87(2)(b) that he would take care of it, but did not do anything and went home. § 87(2)(b) eventually went to the hospital at 3:00 a.m. from Central Booking. § 87(2)(b) believes that he went to § 87(2)(b).

§ 87(2)(b) provided an order of protection during his interview that was created after the incident had occurred. The order of protection states that § 87(2)(b) had a stay away order from § 87(2)(b) and had to refrain from communication or any other contact by mail, telephone, email, voice-mail or other electronic means. The order of protection was signed from August 1, 2012 until October 18, 2012.

### **Attempts to Contact Civilians**

After reviewing the prisoner holding pen roster, it was found that there was one female, § 87(2)(b) in the holding cells who matched the description provided by § 87(2)(b). On February 19, 2013 and February 21, 2013, two phone calls were placed to a phone number linked with § 87(2)(b)'s sister. On March 1, 2013, § 87(2)(b) stated that she had been present in the holding cells on July 31, 2012, but did not hear any interaction between a male in the holding cell and a male officer.

### **NYPD Statements:**

#### **Subject Officer: PO ERICK ACEVEDO**

- A § 87(2)(b)
- *PO Acevedo was assigned to domestic violence and was working with PO Kelvin Garcia.*

### **Memo Book**

At approximately 12:51 p.m., § 87(2)(b) was arrested in front of § 87(2)(b) for a violation of an order of protection and aggravated harassment.

### **CCRB Testimony**

On February 28, 2013, PO Acevedo provided a statement at the CCRB (encl. 5A-D). On July 31, 2012, at approximately 1:00 p.m., PO Acevedo and PO Garcia arrested § 87(2)(b) for violating an order of protection.

On the way to the precinct, PO Acevedo may have spoken to § 87(2)(b) but he could not recall what was said. When they arrived at the precinct, PO Acevedo could not remember if § 87(2)(b) stepped out of the vehicle immediately after PO Acevedo asked him to do so. PO Acevedo could not remember if he told § 87(2)(b) to “get out of the fucking car.”

PO Acevedo interacted with § 87(2)(b) while he was in the holding cell. PO Acevedo could not recall the content of the interaction and could not remember if § 87(2)(b) asked about the order of protection while in the holding cell. PO Acevedo did not tell § 87(2)(b) “What would happen if one day you came out of your building and you’ll be walking down the block and then I’ll see you and you see me and then I’ll saw that you have a weapon on you. And then you’ll know what’ll happen from there.” PO Acevedo did not threaten § 87(2)(b) with the use of force. PO Acevedo did not call § 87(2)(b) a “woman beater” and a “rapist” and did not hear any other officer say this.

§ 87(2)(b) never asked PO Acevedo to be taken to the hospital and PO Acevedo did not hear § 87(2)(b) ask any other officer for medical attention. § 87(2)(b) told PO Acevedo that he was bipolar, but was fine and had taken his medications.

PO Acevedo had interacted with § 87(2)(b) previously and had arrested him on two prior occasions. During the incident, § 87(2)(b) was agitated and stated that PO Acevedo was always after him and had been looking for him for all these years. Besides these verbal statements, § 87(2)(b) was cooperative and did not resist arrest. PO Acevedo was never called to court to testify about the order of protection.

PO Acevedo did not believe he transported § 87(2)(b) to Central Booking. By the time § 87(2)(b) was returned to the precinct to be taken to the hospital, PO Acevedo had completed his tour.

### **Subject Officer: PO KELVIN GARCIA**

- A § 87(2)(b).
- On July 31, 2012, PO Garcia was assigned to domestic violence and was working from 7:05 a.m. to 3:40 p.m. with PO Acevedo. PO Garcia was assigned to marked RMP 3358 and was in uniform.

### **Memo Book**

He had no memo book entries regarding the incident.

### **CCRB Testimony**

On May 10, 2013, PO Garcia provided a statement at the CCRB (encl. 6A-D). He corroborated the statement made by PO Acevedo with the following exceptions.

Upon reaching the stationhouse, § 87(2)(b) complied with exiting the vehicle. At this time, § 87(2)(b) was normal in his demeanor and PO Garcia could not remember if he was still agitated. PO

Acevedo never grabbed his gun and § 87(2)(b) never questioned an officer doing so. PO Garcia did not tell § 87(2)(b) to “get out of the fucking car” and did not hear PO Acevedo make this statement.

Once at the stationhouse, PO Garcia did not interact with § 87(2)(b). PO Acevedo processed the arrest. PO Garcia did not hear PO Acevedo say, “What would happen if one day you came out of your building and you’ll be walking down the block and then I’ll see you and you see me and then I’ll say that you have a weapon on you. And then you’ll know what’ll happen from there.” PO Garcia did not hear PO Acevedo call § 87(2)(b) a “woman beater” or a “rapist” and did not hear him threaten § 87(2)(b) with the use of force. § 87(2)(b) never mentioned anything about medications. At no point was there any verbal bantering which was more tense than a normal conversation. PO Garcia never implied that § 87(2)(b) was going to commit any crime in the future involving a weapon.

### **NYPD Documents**

#### **NYPD Domestic Incident Report (DIR) (encl. 7A-B)**

On July 24, 2012, at approximately 4:30 p.m., § 87(2)(b) stated that § 87(2)(b) violated an order of protection by calling § 87(2)(b) over the phone with his girlfriend, § 87(2)(b). § 87(2)(b) told § 87(2)(b) that she was going to “fuck” her up if she has § 87(2)(b) locked up. § 87(2)(b) also stated that she would pour acid on § 87(2)(b) face and “kick her ass.” § 87(2)(b) said that he would set fire to § 87(2)(b) apartment. The reporting officer for the DIR was PO Tarley Johnson.

#### **Complaint Report (UF 61) (encl. 8A-C)**

On July 24, 2012, a domestic incident report was generated based on a complaint filed by § 87(2)(b). § 87(2)(b) stated that all the threats were made after § 87(2)(b) was served a family court order of protection by the police. The arresting officer spoke with § 87(2)(b) who stated that she has two valid order of protections in effect that § 87(2)(b) violated by communicating and threatening her via cell phone. The New York State Order of Protection Docket § 87(2)(b) was issued by Judge § 87(2)(b) and expires on § 87(2)(b). The reporting/investigating officer for the Complaint Report was PO Acevedo.

#### **Command Log (encl. 9A)**

On July 31, 2012, at approximately 1:00 p.m., PO Acevedo arrested § 87(2)(b) in front of § 87(2)(b) for violating an order of protection. It is noted that § 87(2)(b) did not request medical attention and his mental condition appears to be normal. § 87(2)(b) was later transported to Bronx Central Booking.

#### **Prisoner Holding Pen Roster (encl. 9B)**

There was only one individual, § 87(2)(b) in the holding cells at the same time § 87(2)(b) was present in the morning of August 1, 2012. § 87(2)(b) arrived at the holding cell at 12:35 a.m. and left at 1:00 a.m. § 87(2)(b) arrived at 12:59 a.m. and left at 3:38 a.m.

§ 87(2)(b)

#### **Status of Civil Proceedings (encl. 13E)**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 25, 2013, which is three months after the 90-day filing period, with regard to the incident.

§ 87(2)(b)

\_\_\_\_\_

\_\_\_\_\_

- 
- | Group | Bar 1 Length (approx. %) | Bar 2 Length (approx. %) | Bar 3 Length (approx. %) |
|-------|--------------------------|--------------------------|--------------------------|
| 1     | 95                       | 100                      | 70                       |
| 2     | 98                       | 95                       | 35                       |
| 3     | 98                       | 100                      | 70                       |
| 4     | 98                       | 100                      | 15                       |
| 5     | 95                       | 100                      | 10                       |
| 6     | 95                       | 100                      | 10                       |
| 7     | 95                       | 100                      | 10                       |
| 8     | 95                       | 100                      | 10                       |
| 9     | 95                       | 100                      | 10                       |
| 10    | 95                       | 100                      | 10                       |
| 11    | 95                       | 100                      | 10                       |
| 12    | 95                       | 100                      | 10                       |

§ 87(2)(b)

\_\_\_\_\_

- [illegible]

### Subject Officers CCRB History

- PO Acevedo has been a member of the service for 20 years and there are two substantiated CCRB allegations against him. In CCRB case 200100862, the use of force and the threat of force were substantiated against PO Acevedo. On June 26, 2001, the Board recommended charges and on June 28, 2002, the NYPD provided command discipline (encl. 1A-B).
- PO Garcia has been a member of the service for eight years and there are no substantiated allegations against him (encl. 1C).

## Conclusion

### **Identification of Subject Officer**

PO Acevedo and PO Garcia acknowledged their interaction with § 87(2)(b)

**Investigative Findings and Recommendations**

**Allegation A: Discourtesy- PO Erick Acevedo spoke discourteously to § 87(2)(b)**

**Allegation B: Abuse of Authority- PO Erick Acevedo threatened § 87(2)(b) with the use of force.**

**Allegation C: Abuse of Authority- PO Erick Acevedo did not obtain medical treatment for**

§ 87(2)(b)

§ 87(2)(b) alleged that PO Acevedo told him to “get out of the fucking car,” threatened § 87(2)(b) with the use of force, called § 87(2)(b) a “woman beater and a rapist” and refused to provide him with medical attention.

PO Acevedo denied threatening § 87(2)(b) with the use of force and calling him a “woman beater and a rapist.” § 87(2)(b) did not request medical attention and PO Acevedo could not remember if he told § 87(2)(b) to “get out of the fucking car.” PO Garcia did not hear PO Acevedo tell § 87(2)(b) to “get out of the fucking car,” call him a “woman beater and a rapist,” or threaten him with the use of force. PO Garcia did not hear § 87(2)(b) make mention of medications. The command log noted that § 87(2)(b) was apparently normal.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b), § 87(2)(g).

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)  
§ 87(4-b), § 87(2)(g)  
§ 87(4-b), § 87(2)(g)  
§ 87(4-b), § 87(2)(g)  
§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)  
§ 87(4-b), § 87(2)(g)  
§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)  
§ 87(4-b), § 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date